

HOUSE BILL 447
By Fowlkes

AN ACT to amend Tennessee Code Annotated, Title 37;
and to repeal Tennessee Code Annotated, Section
37-1-407, relative to child protective services
reform.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-1-102(b), is amended by adding the following new subdivisions to be designated as appropriate:

() "Family" means the members of a household living on a full-time or a part-time basis in one house, condominium, apartment or dwelling; people related by blood or ancestry, marriage, or adoption; any person who is holding himself out to the public as being a family member of a minor; foster parents and foster children; stepparents and stepchildren; and any other group that the department determines by policy or rule to constitute a family.

() "Maltreatment" means any form of child abuse or neglect, including but not limited to physical abuse, emotional or psychological abuse, sexual abuse and neglect.

() "Physical injury" means any harm or damage done to or suffered by a person anywhere on that person's body, as distinguished from the mind or spirit.

SECTION 2. Tennessee Code Annotated, Section 37-1-402, is amended by deleting subsection (a) in its entirety and by substituting instead the following new subsection:

(a) The purpose of this part is to safeguard and enhance the welfare of children and preserve family life by preventing the maltreatment of children, by strengthening the ability of families to parent their children, and by investigating maltreatment where it is suspected to have occurred. It is intended that investigations of suspected maltreatment shall be one way to fulfill this purpose, in conjunction with the assessment of children

and families who may be in need of services and the provision of community-based services to families to prevent future maltreatment of children. It is further intended that the department perform its function under this part pursuant to the belief that families can change the circumstances associated with imminent risk to a child when they are provided with intensive, comprehensive services tailored to their strengths and needs. The fundamental assumptions are that most children are better off with their own families than in substitute care and that separation has detrimental effects on both parents and children. Where possible, then, preservation of the family serves as the framework for services, but in any case the best interests of the child shall be paramount.

SECTION 3. Tennessee Code Annotated, Title 37, Chapter 1, Part 4, is amended by adding Sections 4 through 10 of this bill to that part.

SECTION 4.

(a) No later than January 1, 2006, the department shall establish an alternative response child protective services demonstration program that conforms to the requirements of this chapter in at least three but no more than five areas of the state selected by the department. Areas may be composed of any combination of one or more counties or cities or both counties and cities. No later than January 1, 2007, the alternative response child protective services demonstration program shall be expanded to include a total of no less than ten areas of the state selected by the department. No later than January 1, 2009, an alternative response program that conforms to the requirements of this chapter shall be implemented in all areas of the state.

(b) The department shall advise the Governor, the Select Committee on Children and Youth, the Senate General Welfare Committee and the House Children and Family Affairs Committee of the progress it is making towards implementation of the alternative

response program by providing them on October 1, 2005, and every six months thereafter until statewide implementation is achieved, a summary progress report highlighting key implementation activities, including but not limited to site selection, timelines, barriers to implementation, identification of needed resources, and progress in establishing local advisory committees.

SECTION 5. The alternative response program shall be designed to protect children at risk of maltreatment through the effective use of available community resources. Upon receipt of a report of harm pursuant to § 37-1-403, the department shall make an initial screening decision using an approved screening instrument. The screening instrument shall be developed by the department and submitted to the Select Committee on Children and Youth for comment. The department, after reviewing the information available and using the screening instrument, shall determine whether the appropriate level of intervention is:

- (1) Investigation;
- (2) Assessment of need for family and community support services; or
- (3) Referral by the local department for community support services even though the report does not require investigation or assessment.

SECTION 6.

(a) In jurisdictions that have implemented the alternative response program, the following reports of harm immediately shall be referred for investigation:

- (1) Any report of harm alleging facts that, if proven, would constitute severe child abuse as defined in § 37-1-102;
- (2) Any report of harm alleging facts that, if proven, would constitute child sexual abuse as defined in § 37-1-602;
- (3) Any report of harm alleging facts that, if proven, would constitute the following physical injuries to a child:

- (A) Head trauma;
- (B) Broken bones;
- (C) Inflicted burns;
- (D) Organic functional impairment as defined by the department;
- (E) Broken skin;
- (F) Shaken baby syndrome;
- (G) Defensive injuries;
- (H) Injuries related to physical confinement; or
- (I) Infants exposed to illegal narcotics, including methamphetamine.

(4) Any report of harm alleging facts that, if proven, would constitute the following types of neglect:

- (A) A child left without supervision in a dangerous environment;
- (B) Lack of food or nurturance resulting in a failure to thrive;
- (C) Abandonment of a child under the age of eight (8);
- (D) Lack of care that results in a life-threatening condition or hospitalization; or
- (E) Inaction of the parent resulting in serious physical injury.

(5) Any report of harm alleging facts that would result in the removal of a child from the home pursuant to department policy or rule;

(6) Any report of harm alleging facts that involve a caretaker at any institution, including but not limited to any licensed day care center, public or private school, or hospital; or

(7) Any report of harm alleging facts that, if proven, would constitute any other class of injury identified by the department through policy or rule as necessitating investigation.

(b) All investigations shall be conducted in a manner that is consistent with all existing requirements of this chapter. The department shall ensure that all cases under investigation are referred in writing to the appropriate district attorney general and law enforcement officials for criminal investigation. This shall include any case reassigned to investigation status following an initial assignment for assessment of child and family or referral.

(c) For all other reports of harm received by a jurisdiction that has implemented the alternative response program, the department may institute an investigation consistent with the requirements of this part or may institute an assessment of child and family, in its discretion. In the event that the department determines that an assessment of child and family is appropriate, then the local department shall have a face-to-face contact with the child unless it is unreasonable to do so based on the location or absence of the child. The department shall determine the appropriate timeframes for contact, taking into consideration the age of the child, any physical or medical vulnerabilities of the child, allegations of the potential for future harm to the child, access to the alleged perpetrator or the child, and knowledge of any imminent circumstances that would limit that access. If the parent is not present during the contact with the child, the child's parent or guardian shall be contacted as soon as possible following contact with the child, and shall be given a written and verbal explanation of the procedure for assessment of the child and family. The purpose of the assessment of the child and family is to ensure the safety of the child identified in the report and, if appropriate, to provide services to deter future child maltreatment. The assessment of the child and

family and identification of service needs shall be based on information gathered from the family and other sources. The assessment of the child and family shall be completed within forty-five (45) days of receipt of the report. However, upon written justification by the local department, the assessment of the child and family may be extended up to a total of sixty (60) days. The assessment of the child and family shall be in writing and shall be completed in accordance with department regulations.

(d) Upon completion of the assessment of child and family, the department shall consult with the family about services to address the family's needs. When appropriate, families will be offered services through the local department or through community agencies, which may include faith-based organizations, to promote safe, positive relationships within families by emphasizing prevention and assistance. The department may require a family to participate in community services that are offered to the family, in its discretion, and if the family does not cooperate with the provision of community services then the department may determine in its discretion to refer the case for investigation or to refer the case to juvenile court for appropriate action. Any family that declines services offered to them must be informed that their actions in declining services may be considered in evaluating any future reports of harm received by the department.

(e) In the event that a jurisdiction that has implemented the alternative response program receives a report of harm that the department does not determine to rise to a level requiring either investigation or assessment, then the department may contact the family to advise them of the fact that the report of harm was made and refer the family for preventive community services. Families have the option of declining services offered as a result of a report of harm that did not result in an investigation or assessment of child and family. If the family declines the services, the case shall be

closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated or assessed. Any family that declines services offered to them must be informed that their actions in declining services may be considered in evaluating any future reports of harm received by the department.

(f) The department shall commence an immediate investigation if at any time during the assessment of child and family and services it determines that an investigation is required, and that investigation shall be conducted in a manner that is consistent with all requirements of this chapter. The district attorney general and law enforcement officials shall be informed of the investigation consistent with the requirements of this part.

(g) The written assessments of the child and family shall be made available to persons who are the subject of those assessments or to other persons in the same manner as records of investigations are made available, and the assessment of the child and family records shall be maintained in the same manner and for the same length of time as are investigation records.

SECTION 7. No later than October 1, 2007, the department shall submit to the Governor, the Senate General Welfare Committee, the House Committee on Children and Family Affairs, and the Select Committee on Children and Youth a report on the first full year of the demonstration alternative response system that shall include the results of a preliminary independent evaluation of the demonstration project conducted according to accepted and objective research principles, including an appropriate comparison not included in the demonstration project. No later than October 1, 2008, the department shall submit a report to the same parties that shall include the final report of the independent evaluation of the demonstration project. In addition, the department shall provide to the same parties beginning

December 1, 2009, and each year thereafter an annual report produced or procured by the department. Upon request, all persons and groups to whom the annual report is distributed shall be entitled to receive a detailed explanation of the procedures used to evaluate the system and shall be given the raw data used to support the report. Outcomes to be evaluated in each of these reports shall include but not be limited to the following:

- (1) The safety of children under the alternative response system;
- (2) The timeliness of response by the department under the alternative response system;
- (3) The timeliness of services provided to children and families under the alternative response system;
- (4) The level of coordination with local human services and community organizations to ensure community services are available to the public through the alternative response system;
- (5) The risk of future harm to children for whom reports of harm are not deemed to be subject to investigation under the alternative response system;
- (6) The cost effectiveness of the alternative response system with respect to both department resources and law enforcement and judiciary resources; and
- (7) The effectiveness of the alternative response system in keeping families together.

Upon the implementation of the alternative response program in any area, the department shall ensure that all data necessary for compliance with this section is collected and maintained.

SECTION 8. Before the demonstration alternative response system is instituted in any jurisdiction, the department shall assure that all participants in the alternative response system in that jurisdiction are thoroughly trained in matters relating to their role in the program, utilizing

to the extent possible existing training resources for each profession. That training shall include information on the culturally diverse community, including but not limited to religious, dietary, and education requirements of families impacted by this part. At a minimum, training should be provided to all departmental personnel involved in the demonstration project, including caseworkers. In addition, the department shall offer training to attorneys, prosecutors, guardians ad litem, judges, and law enforcement personnel. Informational materials concerning the demonstration program should be prepared for families and their attorneys.

SECTION 9. The department shall ensure that each county in which the alternative response program is implemented forms a local advisory board composed of appropriate community representatives, including representatives from families in the community, local public agencies including schools, health departments and other health care providers, juvenile court, district attorney general and law enforcement officials, and other available community resources. Each local advisory board shall recommend ways to bring together the department, families, and available resource providers within that community, and shall assist with the development of community resources that may be needed by families. The local advisory board may review individual cases, in its discretion, without jeopardizing the confidentiality of the records in those cases.

SECTION 10. The department shall collaborate with the local advisory board and the community to identify or develop local formal and informal services for children and families where a child in the home has been the subject of maltreatment and the potential for a recurrence of child maltreatment is still present.

SECTION 11. Tennessee Code Annotated, Section 37-1-406(a), is amended by deleting the following language:

The county office shall make a thorough investigation promptly after receiving either an oral or written report of harm. All representatives of the child protective services agency

shall, at the initial time of contact with the individual who is subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual consistent with laws protecting the rights of the informant.

and by substituting instead the following language:

The county office shall make a thorough investigation, assessment of the child and family, or take such other action as is appropriate pursuant to the requirements of this chapter, promptly after receiving either an oral or written report of harm. All representatives of the child protective services agency shall, at the initial time of contact with the individual who is the subject of a child abuse and neglect investigation or an assessment of the child and family, advise the individual of the complaints or allegations made against the individual consistent with laws protecting the rights of the informant.

SECTION 12. Tennessee Code Annotated, Section 37-1-407, is repealed in its entirety.

SECTION 13. Tennessee Code Annotated, Section 37-1-409, is amended by inserting the following as a new subsection (f) and by redesignating the remaining subsection:

(f) Except as specifically provided in this chapter, nothing in this chapter shall prevent the department from sharing information with the district attorney general and law enforcement personnel for the purpose of cooperating with a law enforcement investigation. Information from departmental records that is shared with the district attorney general or law enforcement by the department shall remain confidential to the same extent that information not shared with the district attorney general and law enforcement is confidential.

SECTION 14. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.